IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2606 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JAGDISHBHIA I PATEL

Appearance:

1. Special Civil Application No. 2606 of 2001

MR AD OZA, LD.GOVT.PLEADER with Mr.R.V.Desai, Ld.AGP for Petitioner.

MR GIRISH PATEL, Ld.Sr.Counsel with MR. PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 03/10/2001

ORAL JUDGEMENT

1. The State of Gujarat, through the Director Animal Husbandry, Gandhinagar, petitioner has filed this

petition praying for a writ of certiorari, or any other appropriate writ, order or direction, for quashing and setting aside the order dated 24th October, 2000, passed at Exh.31 in Reference (IT) No.114/96 passed by the Presiding Officer, Industrial Tribunal, Ahmedabad. This petition was filed on 19th February, 2001.

2. The facts giving rise to this petition are as under:-

2.1 Shri Jagdishbhai I. Patel, respondent workman was working as electrician Class - IV employees with the Director Animal Husbandry Department, State of Gujarat, as a daily rated worker. He was working in the said department since about 10 years. He was also working as a Union member in this behalf. It was submitted that a dispute regarding petitioner and respondent were pending before the Labour Court. It has been stated that in January 2000 respondent workman was transferred from Thara of Banaskantha District to Haripura Surat.

2.2 Being aggrieved and dissatisfied with the said action the respondent workman has filed an application being Reference (IT) No.114 of 1996 before the Labour Court, Ahmedabad, somewhere in February, 2000. The petitioner had also filed a reply before the tribunal somewhere in July 2000. Before the Labour Court, evidence was also led and ultimately the Labour Court by its impugned judgment and order dated 24th October, 2000, after considering the evidence on record and has held that the Government has passed this transfer order only on the ground that the respondent workman is a member of the union and there are no rules and regulations about the said transfer. It was also held that if the petitioner desire to transfer the respondent employee the petitioner establishment ought to have taken permission under the Industrial Disputes Act. The transfer which has been passed is not stayed the respondent workman will have to suffer irreparable loss which cannot be compensated in terms of money and therefore the tribunal has stayed the said transfer in this behalf.

2.3 Being aggrieved and dissatisfied with the said judgment and order of the tribunal, somewhere on 19th February, 2001, the present petition was filed before this Court.

2.4 When the matter was placed for hearing before this Court on 4th July, 2001, this Court (Coram: Ravi R.Tripathi, J.) pleased to pass the following order:

"The State of Gujarat through the Director, Animal Husbandry, Gandhinagar has challenged the order passed by the Industrial Tribunal, Ahmedabad below Exh.121 in Reference (IT) No.114 of 1996 dated 24.10.2000 whereby the petitioner is directed to stay transfer order dated 18.1.2000 of the respondent workman, whereby the respondent workman was sought to be relieved under transfer from Thara (District Banaskantha) to Haripura (Surat).

Rule. Ad interim relief in terms of para 14(b).

Mr.Pathak, learned advocate for the respondent workman requests for staying the transfer order. Said request is rejected."

3. Mr.Arun D.Oza, learned Government Pleader as well as Mr.R.V.Desai, learned AGP appeared on behalf of the Government. Learned advocate for the petitioner submitted that transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred, he must comply with the order.

3.1 The learned advocate for the petitioner further submitted that transfer is an incidence of service. Who should work where is for the government to decide taking into account the interest of the administration. No employee has a vested right to serve in a particular place. Even in a case where a transfer results in hardship or inconvenience to an employee the proper course for such employee is to approach the higher ups in the administration. It is further submitted that the order of transfer cannot be lightly interfered with. The Court cannot go into the question of relative hardship and it would be for the administration to consider the real hardship in the interest of good and efficient administration.

3.2 In support of the aforesaid principle he has relied on the judgment of the Hon'ble Supreme Court in

the case of STATE BANK OF INDIA Vs ANJAN SANYAL AND OTHERS reported in (2001) 5 SCC 508; STATE OF PUNJAB AND OTHERS Vs. JOGINDER SINGH DHATT reported in AIR 1993 SC 2486; GUJARAT ELECTRICITY BOARD AND ANOTHER Vs ATMARAM SUNGOMAL POSHANI reported in (1989) 2 SCC 602.

3.3 The learned counsel for the petitioner has also relied on the judgement of the Hon'ble Supreme Court in the case of Management of Addisons Paints and Chemicals Ltd. Vs. Workmen, represented by the Secretary (A.P. and C) Assistants Association and Another reported in 2001 LLR 190. In that case the Hon'ble Supreme Court has held that the employee refused to accept the transfer order and refused to report for duty after his transfer. In view of the same, the Hon'ble Supreme Court held that on facts of the case the dispute could have been raised and agitated even after joining. There was no justification for not reporting for duty.

3.4 The learned counsel for the petitioner has further relied on the decision in the case of CIPLA LTD. VS. JAYA KUMAR R. AND ANOTHER REPORTED IN 2000(84) FLR 80. In that case there was a specific Standing Order which provides that workman can be transferred from one department to another. In that facts of the case, the Hon'ble Supreme Court held that if the workman is transferred from Bangalore to its factory at Mumbai, it would not amount to altering the condition of service and provisions of Section 33 of the I.D. Act would not be attracted.

3.5 Over and above, the learned counsel for the petitioner has also relied on the judgement of the Calcutta High Court in the case of SRI PRADIP KUMAR ROY CHOUDHURY VS. OIL AND NATURAL GAS CORPORATION LIMITED & OTHERS reported in 2001 LLR 434 where the court held that in the transfer order the court should not interfere. For similar proposition the learned counsel for the petitioner has also relied on the judgement of the Madras High Court in the case of ESVEES VS. REGIONAL DIRECTOR, EMPPLOYEES' STATE INSURANCE CORPORATION AND OTHERS reported in 2000(84) FLR 83. The learned counsel for the petitioner has also relied on the decision of the Andhra Pradesh High Court in the case of U. APPA RAO VS. A.P. STATE ROAD TRANSPORT CORPORATION AND OTHERS reported in 1999 LLR 1003. In that case the employee was transferred for 18 times during the total period of 24 years of service and the court held that it cannot be a vitiating factor to nullify the present transfer orders if the same is in public interest and administrative exigencies so require.

3.6 The learned counsel for the petitioner has also relied on the decision of the Madras High Court in the case of MANAGEMENT OF ERINKADU ESTATE, KARUMBALAM, NILGIRIS DISTRICT VS. PRESIDING OFFICER, LABOUR COURT, COIMBATORE reported in 2001 LLR 299 and also relied on the judgement of the Karnataka High Court in the case of MANAGING DIRECTOR, BHARAT GOLD MINES LTD., KOLAR GOLD FIELD VS. SUNDARESHAN AND OTHERS reported in 2001 LLR 303. He has further relied on the judgement of the Allahabad High Court in the case of SMT. S.D. TEWARI VS. CHIEF MEDICAL SUPERINTENDENT, T.B. SAPRU HOSPITAL, ALLAHABAD AND OTHERS reported in 2000 LLR 636 and also Division Bench judgement of the Madhya Pradesh High Court in the case of D.N. DUNIYA, JABALPUR VS. LABOUR COURT, JABALPUR AND ANOTHER reported in I L.L.N. 745 where the Division Bench (Coram: SRI B.C. Verma and SRI D.M. Dharmadhikari, JJ (as he then was)) held that transfer has no concern whatever with pending dispute relating to fixation of wages and transfer order does not have the effect of altering service condition of employee to his prejudice. Hence the employee's application under Section 33A of the Act is wholly untenable. The court has quashed and set aside the Labour Court's order staying the transfer on that ground.

4. On the other hand, Mr. Girish Patel, learned senior counsel with Mr. P.H. Pathak, learned advocate appeared on behalf of the respondent. He has stated that in this case the Labour Court has clearly held that the workman who is Class IV employee receiving salary of about Rs. 5000/- has been transferred from Banaskantha to Surat. He has relied on the Government Circular which provides that such employees will be transferred to the same district. He submitted that Government Circular provides transfer within district only. He submitted that the transfer order of respondent outside district so same is in violation of the Government's own Circular.

4.1 He further submitted that the workman is working since last 10 years and carrying work of electrician and the work of electrician is in permanent nature and the service of the respondent workman can be utilised in the said electric department. When he was appointed in service there were no terms and conditions of service. He submitted that the case of the government is that there is no work at Thara in Banaskantha but in reality the work is there and now the government desires to take work from contract labour. Therefore, the action of the government is not bona fide. The post of electrician has not been abolished at Thara in this behalf.

4.2 He has further submitted that because the respondent happens to be representative of Union and therefore transfer order has been passed on the ground of mala fide. He submitted that the only purpose of transferring the workman from Thara to Surat is to see that the workman is deprived of the benefit as Union leader in this behalf. He submitted, it is no doubt true, that normally the court is slow to interfere with the transfer but when there is an allegation of mala fide the court does interfere in this behalf. He submitted that this is perfectly a justified case in which the court should interfere and the Labour Court has rightly interfered with the transfer order.

4.3 In support of the aforesaid contention the learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of RAJENDRA ROY Vs. UNION OF INDIA AND ANOTHER reported in AIR 1993 SC 1236 particularly para 7 on page 1239 reads as under:

> "It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer."

4.4 He has also relied on the judgment of the Hon'ble Supreme Court in the case of PRABODH SAGAR Vs. PUNJAB STATE ELECTRICITY BOARD AND OTHERS reported in AIR 2000 SC 1684, particularly para 13 on page 1690 what is meant by malafide the Hon'ble Supreme Court has observed as under:

> "Incidentally, be it noted that the expression `mala fide' is not a meaningless jargon and it had its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances."

4.5 The learned counsel for the respondent workman has submitted that before Labour Court demand of all

workers of the union as to whether all workmen are permanent or not was already pending before the Labour Court that being a Reference Case No.114 of 1996. During the pendency of the said proceedings the respondent workman has been transferred from Thara, Banaskantha District to Surat. It was contended that before initiating this transfer the Government ought to have taken permission of tribunal when main dispute regarding permanency of workman was pending particularly when respondent workman was a trade union worker and therefore the transfer of the workman has also been challenged on that ground also that there was violation of provisions of the Industrial Disputes Act. In fact the Labour Court has already held that as the Government has not taken prior permission under the Act, the action of the Government is not legal and valid.

4.6 Learned advocate for the respondent workman has also stated that in this case Labour Court has considered entire evidence on record and has also taken into consideration all points of law in this behalf. The Labour Court has come to the conclusion on findings of fact that transfer of employee is only on the ground that respondent workman was a representative union and the transfer is for obligue purpose and not bonafide. Learned counsel further submitted that the transfer order is not in the public interest but it is a case of victimization of an officer because he happened to be a union leader. He therefore submitted that transfer of respondent workman is nothing but malafide exercise of power. There was no terms and conditions governing Government department and respondent workman in this behalf. The Government has not produced any evidence that there is no work of electrician at Surat. He therefore submitted that all these findings of the Labour Court are concurrent finding of fact and under Article 226/227 of the Constitution of India all issues of concurrent finding of fact, it is not open to interfere by this Court particularly when Labour Court has exercised the discretionary power judicially.

5. In any view of the matter the learned counsel for the respondent workman submitted that this is an interim order of the Tribunal and this Court may not interfere with the finding of the Tribunal. For that purpose he has relied on the following decisions:-

5.1 CENTRAL BANK OF INDIA VS. ROOPLAL BANSAL reported in (1999) 9 SCC 254 in which on page 255 at paragraph No. 6, the Hon'ble Supreme Court has observed as under:-

"In our opinion, the High court was not right in entertaining the writ petition. The transaction between the parties was purely a commercial one. Admittedly, the respondent had stood as guarantor in respect of the loans which had been advanced by the appellant. For the realisation of the amount, the appellant had filed a suit in a court of competent jurisdiction. If the respondent had any grievance in respect of the letter dated 7.10.1986, then the proper remedy available to the respondent was to file a Civil Suit and the High Court ought not to have entertained a writ petition under Article 226 of the Constitution especially when disputed questions of fact had to be gone into. On this ground alone, the judgement of the High Court is liable to be set aside."

5.2 He has further relied on the decision of the Hon'ble Supreme Court in the case of KOYILERIAN JANAKI AND OTHERS VS. RENT CONTROLLER (MUNSIFF) CANNANORE AND OTHERS reported in (2000) 9 SCC 406 in which on page 409 at paragraph No. 4, it is observed thus:-

"Further we are in agreement with the argument of learned counsel for the appellant that it was not appropriate for the High Court to have interfered with the order passed by the District Judge in exercise of its power under Article 227 of the Constitution. The proceedings in the present case arose under a special Act governing the landlord and tenant relationship and disputes. The Act does not provide any second appeal or revision to the High Court. The purpose behind for not providing such remedy is to give finality to the order passed under the Act. The power under Article 227 is exercisable where it is found by the High Court that due to a certain grave error an injustice has been caused to a party. For this reason also, the judgement of the High Court deserves to be set aside."

5.3 In this case Mr. Patel, learned counsel for the respondent workman has stated that the Labour Court has already passed an order dated 24.10.2000 where the transfer order was stayed. Thereafter the petition was filed somewhere in February 2001 and interim relief is obtained only on 4.7.2001. In view of the fact that the Government has greatly delayed in filing the petition and obtaining the order during the pendency of the Labour

Court proceedings, the workman may be allowed to stay at Thara in Banaskantha District.

6. I have heard the matter at length. I have also gone through the evidence on record and also the finding of the Labour Court and I have also gone through the affidavit in this behalf. In my view it is true that normally the court should not interfere with the transfer and there is a catena of decisions in this behalf. However, in this case the Labour Court has passed only interim order and I do not propose to interfere with the said order of the Labour Court at this stage because any observation made by this court may affect the merits of the matter.

7. In my view, therefore, the submission of the respondent workman is reasonable and during the pendency of the proceedings the respondent workman is allowed to work at Thara in Banaskantha District.

8. In view of the same, if following directions are given the same will be in the interest of justice.

(i) Both the government and the respondent workman are entitled to file documentary evidence and also make oral submissions before the Labour Court and the Labour Court will, after considering the same try to dispose of the matter by 30.11.2001. The labour court will pass a speaking order in this behalf.

(ii) Till the Labour Court decides the matter, namely, by 30.11.2001, the respondent workman is allowed to work at Thara in Banaskantha District.

9. In view of the above, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. MEHTA, J)
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